(4) To allow contractors to earn profits commensurate with the assumption of risk.

(c) The profit-analysis factors prescribed in the EPA structured approach for analyzing profit or fee include those prescribed by FAR 15.404(d)(1), and additional factors authorized by FAR 15.404(d)(2) to foster achievement of program objectives. These profit or fee factors are prescribed in 1515.404–471.

**1515.404–471 EPA structured approach for developing profit or fee objectives.**

(a) General. To properly reflect differences among contracts, and to select an appropriate relative profit/fee in consideration of these differences, weightings have been developed for application by the contracting officer to standard measurement bases representative of the prescribed profit factors cited in FAR 15.404(d) and EPAAR 1515.404–471(b)(1). Each profit factor or subfactor, or its components, has been assigned weights relative to their value to the contract’s overall effort, and the range of weights to be applied to each profit factor.

(b)(1) Profit/fee factors. The factors set forth in this paragraph, and the weighted ranges listed after each factor, shall be used in all instances where the profit/fee is negotiated.

<table>
<thead>
<tr>
<th>CONTRACTOR’S INPUT TO TOTAL PERFORMANCE</th>
<th>Weight Range (Percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Direct material ..............................................</td>
<td>1 to 4.</td>
</tr>
<tr>
<td>Professional/technical labor ...............</td>
<td>8 to 15.</td>
</tr>
<tr>
<td>Professional/technical overhead ..........</td>
<td>6 to 9.</td>
</tr>
<tr>
<td>General labor ............................................</td>
<td>5 to 9.</td>
</tr>
<tr>
<td>General overhead ......................................</td>
<td>4 to 7.</td>
</tr>
<tr>
<td>Subcontractors ............................................</td>
<td>1 to 4.</td>
</tr>
<tr>
<td>Other direct costs .....................................</td>
<td>1 to 3.</td>
</tr>
<tr>
<td>General and administrative expenses ..........</td>
<td>5 to 8.</td>
</tr>
<tr>
<td>Contractor’s assumption of contract cost risk</td>
<td>0 to 6.</td>
</tr>
</tbody>
</table>

(2) The contracting officer shall first measure the “Contractor’s Input to Total Performance” by the assignment of a profit percentage within the designated weight ranges to each element of contract cost. Such costs are multiplied by the specific percentages to arrive at a specific dollar profit or fee.

(3) The amount calculated for facilities capital cost of money (FCCM) shall not be included as part of the cost base for computation of profit or fee. The profit or fee objective shall be reduced by an amount equal to the amount of facilities capital cost of money allowed. A complete discussion of the determination of facilities capital cost of money and its application and administration is set forth in FAR 31.205–10, and the appendix to the FAR (see 48 CFR 9904.414).

(4) After computing a total dollar profit or fee for the Contractor’s Input to Total Performance, the contracting officer shall calculate the specific profit or fee dollars assigned for cost risk and performance. This is accomplished by multiplying the total Government cost objective, exclusive of any FCCM, by the specific weight assigned to cost risk and performance. The contracting officer shall then determine the profit or fee objective by adding the total profit dollars for the Contractor’s Input to Total Performance to the specific dollar profits assigned to cost risk and performance. The contracting officer shall use EPA Form 1900–2 in hardcopy or electronic copy equivalent to facilitate the calculation of the profit or fee objective.

(5) The weight factors discussed in this section are designed for arriving at profit or fee objectives for other than nonprofit and not-for-profit organizations. Nonprofit and not-for-profit organizations are addressed as follows:

(i) Nonprofit and not-for-profit organizations are defined as those business entities organized and operated:

(A) Exclusively for charitable, scientific, or educational purposes;

(B) Where no part of the net earnings inure to the benefit of any private shareholder or individual;

(C) Where no substantial part of the activities is for propaganda or otherwise attempting to influence legislation or participating in any political campaign on behalf of any candidate for public office; and

(D) Which are exempt from Federal income taxation under Section 51 of the Internal Revenue Code. (26 U.S.C.)

(ii) For contracts with nonprofit and not-for-profit organizations where fees are involved, special factor of –3 percent shall be assigned in all cases.

(c) Assignment of values to specific factors—(1) General. In making a judgment
on the value of each factor, the contracting officer should be governed by
the definition, description, and purpose of the factors, together with consider-
ations for evaluation set forth in this paragraph.

(2) Contractor’s input to total performance. This factor is a measure of how
much the contractor is expected to contribute to the overall effort neces-
sary to meet the contract performance requirements in an efficient man-
ner. This factor, which is separate from the contractor’s responsibility for con-
tract performance, takes into account what resources are necessary, and the
creativity and ingenuity needed for the contractor to perform the statement of
work successfully. This is a recognition that within a given performance out-
put, or within a given sales dollar figure, necessary efforts on the part of in-
dividual contractors can vary widely in both value, quantity, and quality, and
that the profit or fee objective should reflect the extent and nature of the
contractor’s contribution to total performance. Greater profit opportunity
should be provided under contracts requiring a high degree of professional
and managerial skill and to prospective contractors whose skills, faciliti-
ties, and technical assets can be expected to lead to efficient and economi-
cal contract performance. The evaluation of this factor requires an analysis
of the cost content of the proposed contract as follows:

(i) Direct material (purchased parts and other material). (A) Analysis of these
cost items shall include an evaluation of the managerial and technical effort
necessary to obtain the required materi-

(1) Environmental Protection Agency 1515.404–471

(2) Consideration should be given to
the managerial and technical efforts necessary for the prime contractor to
administer subcontracts, and to select
subcontractors, including efforts to
break out subcontracts from sole
sources, through the introduction of
competition.

(C) Recognized costs proposed as di-
rect material costs such as scrap
charges shall be treated as material for
profit evaluation.

(D) If intracompany transfers are ac-
cepted at price, in accordance with
FAR 31.205–26(e), they should be ex-
cluded from the profit or fee computa-
tion. Other intracompany transfers
shall be evaluated by individual com-
ponents of cost, i.e., material, labor,
and overhead.

(ii) Professional/technical and general
labor. Analysis of labor should include
evaluation of the comparative quality
and level of the talents and experience
to be employed. In evaluating labor for
the purpose of assigning profit dollars,
consideration should be given to the
amount of notable scientific talent or
unusual or scarce talent needed, in
contrast to journeyman effort or sup-
porting personnel. The diversity, or
lack thereof, of scientific and engineer-
ing specialties required for contract
performance, and the corresponding
need for supervision and coordination,
should also be evaluated.

(iii) Overhead and general and admin-
istrative expenses. (A) Where prac-
ticable, analysis of these overhead
items of cost should include the eval-
uation of the individual elements of
these expenses, and how much they
contribute to contract performance.
This analysis should include a deter-
mination of the amount of labor within
these overhead pools, and how this
labor would be treated if it were con-
sidered as direct labor under the con-
tract. The allocable labor elements
should be given the same profit consid-
eration as if they were direct labor.
The other elements of indirect cost
pools should be evaluated to determine
whether they are routine expenses such
as utilities, depreciation, and mainte-
nance, and therefore given less profit
consideration.

(B) The contractor’s accounting sys-

25
expenses within the classification of professional/technical overhead, general overhead and general and administrative expenses.

(iv) Subcontractors. (A) Subcontract costs should be analyzed from the standpoint of the talents and skills of the subcontractors. The analysis should consider if the prime contractor normally should be expected to have people with comparable expertise employed as full-time staff, or if the contract requires skills not normally available in an employer-employee relationship. Where the prime contractor is using subcontractors to perform labor which would normally be expected to be done in-house, the rating factor should generally be at or near 1 percent. Where exceptional expertise is retained, or the prime contractor is participating in the mentor-protégé program, the assigned weight should be nearer to the high end of the range.

(v) Other direct costs. The analysis of these costs should be similar to the analysis of direct material.

(3) Contractor’s assumption of contract cost risk. (i) The risk of contract costs should be shifted to the fullest extent practicable to contractors, and the Government should assign a rating that reflects the degree of risk assumption. Evaluation of this risk requires a determination of the degree of cost responsibility the contractor assumes, the reliability of the cost estimates in relation to the task assumed, and the chance of the contractor’s success or failure. This factor is specifically limited to the risk of contract costs. Thus, such risks of losing potential profits in other fields are not within the scope of this factor.

(ii) The first determination of the degree of cost responsibility assumed by the contractor is related to the sharing of total risk of contract cost by the Government and the contractor, depending on selection of contract type. The extremes are a cost-plus-fixed-fee contract requiring only that the contractor use its best efforts to perform a task, and a firm-fixed-price contract for a complex item. A cost-plus-fixed-fee contract would reflect a minimum assumption of cost responsibility by the contractor, whereas a firm-fixed-price contract would reflect a complete assumption of cost responsibility by the contractor. Therefore, in the first step of determining the value given for the contractor’s assumption of contract cost risk, a lower rating would be assigned to a proposed cost-plus-fixed-fee best efforts contract, and a higher rating would be assigned to a firm-fixed-price contract.

(iii) The second determination is that of the reliability of the cost estimates. Sound price negotiation requires well-defined contract objectives and reliable cost estimates. An excessive cost estimate reduces the possibility that the cost of performance will exceed the contract price, thereby reducing the contractor’s assumption of contract cost risk.

(iv) The third determination is that of the difficulty of the contractor’s task. The contractor’s task may be difficult or easy, regardless of the type of contract.

(v) Contractors are likely to assume greater cost risks only if the contracting officer objectively analyzes the risk incident to the proposed contract, and is willing to compensate contractors for it. Generally, a cost-plus-fixed-fee contract would not justify a reward for risk in excess of 1 percent, nor would a firm-fixed-price contract normally justify a reward of less than 4 percent. Where proper contract type selection has been made, the reward for risk by contract type would usually fall into the following percentage ranges:

<table>
<thead>
<tr>
<th>Type of contract</th>
<th>Percentage ranges</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost-plus-fixed-fee</td>
<td>0 to 1.</td>
</tr>
<tr>
<td>Prospective price determination</td>
<td>4 to 5.</td>
</tr>
<tr>
<td>Firm-fixed-price</td>
<td>4 to 6.</td>
</tr>
</tbody>
</table>

(A) These ranges may not be appropriate for all acquisitions. The contracting officer might determine that a basis exists for high confidence in the reasonableness of the estimate, and that little opportunity exists for cost reduction without extraordinary efforts. The contractor’s willingness to accept ceilings on their burden rates should be considered as a risk factor for cost-plus-fixed-fee contracts.
27

1515.408 Solicitation provisions and contract clauses.

(a) In addition to those provisions and clauses prescribed in FAR 15.408, when an exception to FAR 15.403–1 does not apply and no other means available can be used to ascertain whether a fair and reasonable price can be determined, the contracting officer may insert in negotiated solicitations the provisions at—

(1) 1552.215–72 when requesting information other than cost or pricing data, for cost-reimbursable, level-of-effort contracts. Use Alternate I for cost-reimbursable, level-of-effort contracts when the Government’s requirement is for fully dedicated staff for a twelve month period(s) of performance and performance is on a Government facility; Alternate II for acquisitions for cost-reimbursable, level-of-effort contracts when the Government’s requirement is for fully dedicated staff for a twelve month period(s) of performance and performance is not on a Government facility; and Alternate III if the Government’s requirement is for the acquisition of supplies or equipment.

(B) In making a contract cost risk evaluation in an acquisition that involves definitization of a letter contract, consideration should be given to the effect on total contract cost risk as a result of partial performance under a letter contract. Under some circumstances, the total amount of cost risk may have been effectively reduced by the existence of a letter contract. Under other circumstances, it may be apparent that the contractor’s cost risk remained substantially as great as though a letter contract had not been used. Where a contractor has begun work under an anticipatory cost letter, the risk assumed is greater than normal. To be equitable, the determination of a profit weight for application to the total of all recognized costs, both those incurred and those yet to be expended, must be made with consideration to all relevant circumstances, not just to the portion of costs incurred or percentage of work completed prior to definitization.

1515.403–472 Other methods.

(a) Contracting officers may use methods other than those prescribed in 1515.404–470 for establishing profit or fee objectives under the following types of contracts and circumstances:

(1) Architect-engineering contracts;
(2) Personal service contracts;
(3) Management contracts, e.g., for maintenance or operation of Government facilities;
(4) Termination settlements;
(5) Services under labor-hour and time and material contracts which provide for payment on an hourly, daily, or monthly basis, and where the contractor’s contribution constitutes the furnishing of personnel.
(6) Construction contracts; and
(7) Cost-plus-award-fee contracts.

(b) Generally, it is expected that such methods will:

(1) Provide the contracting officer with a technique that will ensure consideration of the relative value of the appropriate profit factors described under “Profit Factors,” in FAR 15.404–4(d) and
(2) Serve as a basis for documentation of the profit or fee objective.

1515.408–473 Limitations.

(a) In addition to the limitations established by statute (see FAR 15.404–4(b)(4)(i)), no administrative ceilings on profits or fees shall be established, except those identified in EPAAR (48 CFR) 1516.404–273(b).

(b) The contracting officer shall not consider any known subcontractor profit/fee as part of the basis for determining the contractor profit/fee.

1515.408–474 Waivers.

Under unusual circumstances, the SCM may specifically waive the requirement for the use of the guidelines. Such exceptions shall be justified in writing, and authorized only in situations where the guidelines method is unsuitable.